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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

HARTFORD LIFE INSURANCE,

Plaintiff,

v.

JOHN D. WILLIAMS, as Conservator,  
etc.,

Defendant and Respondent;

REGINALD BURGESS,

Defendant and Appellant.

B219508

(Los Angeles County Super. Ct.  
No. BC390497)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ruth A. Kwan, Judge. Affirmed.

Reginald Burgess, in pro. per., for Defendant and Appellant.

Law Offices of Andrea G. Van Leesten and L'tanya M. Butler for Defendant and Respondent.

Defendant and appellant Reginald Burgess appeals from a portion of a judgment following an order granting summary judgment in favor of defendant and respondent John D. Williams, as conservator of the person and estate of his brother George Williams (the Conservator), in this action concerning claims to an annuity.<sup>1</sup> On appeal, Burgess has failed to provide an intelligible description of his claims and/or cognizable legal arguments, and therefore, we affirm.

## **FACTS AND PROCEDURAL BACKGROUND**

### **Probate Proceedings**

In 1999, George's wife June Williams purchased an annuity from Hartford Life Insurance Company naming Kimberly Cordova as the beneficiary. On August 10, 2001, George and June executed living trusts which named June's niece Karen Sparks as the successor trustee. Sparks was married to Burgess at the time and began serving as trustee the following month. Sparks changed the beneficiary designation of the annuity to "the trust of June L. and George W. Williams." George's and June's interest in their home on South Victoria Avenue was placed in their trusts. However, Sparks transferred the home to Burgess as a "gift." June died on October 4, 2001. June's trust gave her property to George.

On November 6, 2001, the Conservator petitioned the probate court to be appointed conservator of George's person and estate. The Conservator filed a petition in the probate court on George's behalf seeking the return of the South Victoria Avenue home. After several hearings, on June 11, 2002, the probate court found Burgess and

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<sup>1</sup> Because more than one party shares the last name Williams, they will be referred to by their first names for ease of reference. George died during the pendency of the appeal. We grant the Conservator's request to take judicial notice of letters of administration appointing him as administrator of George's estate, however we refer to him in the capacity that he served during the trial court proceedings.

Sparks had prepared and obtained June and George's signatures on the living trusts through undue influence at a time when neither possessed the capacity required to execute the documents. The probate court revoked George's living trust and ruled that title to the South Victoria Avenue property must be transferred to the Conservator.

Burgess filed "removal" papers in federal court stating that the basis of the federal court jurisdiction was the Conservator's discrimination against him by intentionally interfering with the terms, conditions, or privileges of rental facilities. No such case existed and the federal court rejected Burgess's attempt to invoke federal jurisdiction by finding the case was improperly accepted by the federal court clerk and ultimately dismissing the case on the federal court's own motion with prejudice.

The probate court entered a written order on August 8, 2002, transferring title to the property to the Conservator. Burgess filed a notice of appeal from the August 8, 2002 order.

On October 30, 2002, Burgess sent Hartford a request to change the beneficiary of June's annuity to Burgess, which June had purportedly signed two days before her death on October 2, 2001. Burgess filed for bankruptcy protection under Chapter 7. In December 2002, he filed amended schedules of personal and exempt property claiming a homestead exemption for the South Victoria Avenue property and listing equitable or future interests in two lawsuits. On January 13, 2003, Burgess was granted a discharge pursuant to title 11 of the United States Code section 727.

On appeal from the August 8, 2002 probate order, Burgess contended that the probate court lacked jurisdiction to enter the August 8, 2002 order due to the federal court removal. He also argued that by claiming a homestead exemption in his bankruptcy proceeding, which was subsequently discharged, the bankruptcy court had established title in his favor. This appellate court found Burgess's attempts to manipulate the jurisdiction were unsuccessful and the bankruptcy filing did not invalidate the probate court's earlier orders. The appellate court affirmed the August 8, 2002 probate order.

## **The Interpleader Action**

On January 15, 2008, Hartford filed the instant interpleader action against Burgess, Sparks, the Conservator, and Cordova. On February 11, 2008, Burgess filed a document which was a combined answer to the interpleader action and a cross-complaint alleging several causes of action. Because only the first page of the document has been included in the record on appeal, it is not possible to ascertain the names of the cross-defendants or which of the causes of action were asserted against them. On February 20, 2008, the Conservator filed an answer to the interpleader complaint.

On February 25, 2008, Burgess filed a motion to set aside and reform the August 8, 2002 order. On February 27, 2008, Burgess filed an amended cross-complaint, which is not part of the record on appeal. On April 14, 2008, Burgess requested entry of the Conservator's default on the amended cross-complaint. On May 29, 2008, Burgess filed a second amended cross-complaint which included causes of action against the Conservator for breach of fiduciary duty, intentional infliction of emotional distress, and intentional interference with prospective economic advantage.<sup>2</sup>

There is no evidence in the record that the Conservator was served with, or had his default entered as to, the second amended cross-complaint. In addition, the following documents are alluded to, but have not been made part of the record: a motion by Hartford to be discharged as the stakeholder and a motion by Burgess to dismiss the interpleader action on the ground that the Conservator was in default.

The Conservator filed a motion for summary judgment. A hearing was held on August 4, 2009, on the Conservator's motion for summary judgment. The trial court stated that the motion for summary judgment was based on the statement of decision in the prior case, as well as a declaration by Sparks that June did not have the capacity to sign the October 2, 2001 annuity change request form. The trial court found the evidence

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<sup>2</sup> On appeal, Burgess refers to the document as the "Third Amended Cross-Complaint."

and the prior ruling established that June was not capable of signing any document naming Burgess as the beneficiary in the weeks leading up to her death. The trial court granted the Conservator's motion for summary judgment. The trial court also found that despite Hartford's best efforts, Cordova could not be located. Therefore, the trial court ordered the interpleaded funds released to June's estate. Burgess filed a notice of appeal from the August 4, 2009 order, except as to the portion of the order awarding funds to June's estate.

On October 7, 2009, the trial court entered a written order granting summary judgment in favor of the Conservator as against Burgess's claim. The trial court found Burgess was not entitled to any portion of the interpleaded funds, because June had been physically and mentally incapable of signing an annuity change request to Hartford on October 2, 2001, requesting to change the beneficiary designation to Burgess. That same day, the trial court entered judgment against Burgess on his claim to the funds interpleaded by Hartford. George died on July 16, 2009, while the appeal was pending and John was appointed administrator of George's estate.

## **DISCUSSION**

### **Waiver**

Burgess's contentions are so poorly articulated in his briefs on appeal as to be unintelligible, which has been compounded by the limited appellate record. Burgess's claims are deemed waived for failure to provide pertinent or intelligible legal argument. "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.)

## Default

To the extent this court can interpret Burgess's claims on appeal, we find them to be without merit. Burgess argues that the Conservator was in default at the time of the summary judgment proceedings. The record does not support this contention.

"It is well settled, of course, that a party challenging a judgment has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; see also *Davenport v. Unemployment Ins. Appeals Bd.* (1994) 24 Cal.App.4th 1695, 1700.) "The [appellant] must affirmatively show error by an adequate record. [Citations.] Error is never presumed. It is incumbent on the [appellant] to make it affirmatively appear that error was committed by the trial court. [Citations.] . . . 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent. . . .' (Orig. italics.) [Citation.]" (*Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712.) In the absence of a proper record on appeal, the judgment is presumed correct and must be affirmed. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.)

A material amendment to a complaint after the defendant's default has been entered "opens the default, and unless the amended pleading be served on the defaulting defendant, no judgment can properly be entered on the default. [Citations.] . . .' [Citation.]" (*Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1743.)

The record contains only the first page of Burgess's cross-complaint. The amended cross-complaint, to which Burgess obtained entry of the Conservator's default, is not part of the record on appeal. The second amended complaint, which Burgess refers to as the third amended complaint, is part of the record on appeal, but without the prior versions, it is not possible to ascertain whether material amendments were made to the cross-complaint after the default was entered. It does not appear that the Conservator was served with the second amended complaint. Moreover, Burgess has not provided any of the documents filed when he raised the issue of the Conservator's default in the

trial court. The record is inadequate to review this issue and we presume the trial court correctly ruled that the Conservator was not in default.

### **Summary Judgment of Burgess's Claim**

Burgess appears to argue that the trial court should not have considered the findings of the August 8, 2002 probate order to find June lacked capacity to execute the change of beneficiary request, because the August 8, 2002 order is invalid. However, Burgess appealed and the appellate court affirmed the August 8, 2002 order. The order is final and the validity of the order is not at issue in this case. Moreover, the Conservator submitted additional evidence showing that June did not have the capacity to execute a change of beneficiary request two days prior to her death. Burgess did not submit any evidence in opposition to the motion or raise a triable issue of fact as to June's capacity to execute the form. Since Burgess's claim to the funds was based on the change of beneficiary request form, the trial court properly granted summary judgment of Burgess's claim.

### **Effect of Bankruptcy Discharge**

Burgess seems to argue that the bankruptcy discharge eliminated the Conservator's claim to the funds. The annuity funds do not appear to have been listed on his bankruptcy schedule. Even if they were listed, there was a dispute as to whether Burgess was entitled to the funds and the ownership issue was not determined by the bankruptcy court. Burgess's contention is simply incorrect.

## **DISPOSITION**

The judgment is affirmed. Respondent John D. Williams is awarded his costs on appeal.

KRIEGLER, J.

We concur:

MOSK, Acting P. J.

WEISMAN, J.\*

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\* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.